

INSANITY AND DETENTION.*

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This Report follows the Report of an earlier Commission of a few years ago. The earlier Commission considered the care and treatment of the insane in detention, whilst this Report deals with the law and practice relating to the arrest, certification and detention of the person, and the possibility of affording treatment in proper cases without certification. Whilst the matter of care and treatment is mentioned in this Report, the Report is mainly concerned with the question of the detention of the person.

The Report is an exceedingly interesting document. Throughout its pages it reveals a continuous and alert criticism of the present system attending the preliminary proceedings and ultimate detention of the insane, and of the principles upon which both law and practice rest.

To the question of initial certification—that is to the process by which the patient passes from the stage of the “alleged lunatic” to the condition of certified “insane”—the Commissioners devoted much attention. This is a vitally important matter and the Commissioners rightly conclude that the pressure of time limits upon preliminary detention without certification, imposed by the law, bears heavily upon those charged with the responsibility of administration. Since the great majority of insane are classed as paupers (115,000 out of a total of 130,000) it follows that this involves a criticism of the work of the medical men and the Relieving Officer. On this point the ingenious method of securing more time was explained to the Commissioners, who report that “the moratorium secured by the ingenuity of the Relieving Officer undoubtedly results in many cases avoiding final certification.”

The same matter was investigated on the complaints of former patients. Upon that the Commissioners report:—

“In the case of all the persons whose evidence we heard we had ‘before us the records, including the case book entries, made at the ‘time of their detention, and we were not satisfied that any case of ‘wrongful detention had been made out. Some of the patients, who ‘complained that they had been detained for an unduly long period,

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“had obviously no appreciation of their condition, having regard to the symptoms that were recorded in the contemporary medical reports.”

And again “We think it proper to record that in none of the cases which were investigated by us we were satisfied on the evidence that improper detention had been suffered, whilst the general evidence which we received on this subject was reassuring. In the result, we were satisfied that in practice instances of sane persons being wrongfully certified or improperly detained must be of the rarest occurrence.”

The Commissioners also considered the suggestion that the detention of patients might be unduly prolonged (a) in the case of private patients, for the profit which their detention brings to the Institution, and (b) in the case of pauper patients, for the value of the services they may render in the working of the Institution. The Commissioners investigated actual cases, alleged to support these suggestions. In the result the Commissioners report that they find no ground to support either suggestion.

It is impossible to read this report without feeling that the administration of the existing law is well carried out. It follows that the Report is mainly concerned in a criticism of the principles upon which the law rests and on the law itself. In paragraph 169 the Commissioners say “we have come to the conclusion that no radical changes are required in the present system, but that . . . certain adjustments and amendments in points of detail might, with advantage, be adopted.”

Opinion will be much divided as to how far the “certain adjustments and amendments” may properly be regarded as mere “points of detail.” For example, there are dotted about this Report various suggestions for strengthening the hands of the Board of Control: every such suggestion is a minor one, but collectively their effect must be to make the Board a real Board of Control and perhaps restore to the Board the Statutory status which the Mental Deficiency Act, 1913, under which the Board was constituted, intended it should have. Other suggestions appear to go far beyond mere points of detail. Among the latter may be mentioned four points of cardinal importance:

1. Voluntary treatment without certificate or under “Provisional Order.”
2. To permit patients to be maintained in institutions hitherto unlicensed.
3. The “extrication” of lunacy administration from the Poor Law.
4. The establishment of a national system of research.

These proposals we will examine in detail shortly, but it is first necessary to observe the principles relied upon by the Commissioners as justifying the changes. These may be stated in the language of the Report:—

“It is being perceived that insanity is, after all, only a disease “like other diseases, though with distinctive symptoms of its own, “and *that a mind diseased can be ministered to no less effectively than “a body diseased.*”

"It has become increasingly evident to us that there is no clear line of demarcation between mental illness and physical illness. . . . The public, and the legislature reflecting public opinion, have been too prone to draw a definite line between the sane and the insane, and to prescribe freedom for the sane and detention for the insane. *There is no such line.*"

"Except in the case of registered hospitals and licensed houses the doors of our institutions for the treatment of the mentally afflicted are closed to all but certified cases. . . . The pre-requisite of certification is that the patient's disease shall be so definite and well-established that he can be declared by a medical practitioner to be actually of unsound mind and in a condition justifying compulsory detention" *"Certification should be the last resort in treatment not the pre-requisite of treatment."* "The Key-note of the past has been detention: the key-note of the future should be prevention and treatment."

"We are satisfied that, under the present system, a considerable number of persons are certified who might avoid certification if certification were preceded by a period of observation and treatment, coupled, if necessary, with temporary or provisional powers of detention."

These extracts, and much else in the Report, serve to bring out the essence of the problem, i.e., the case of the person suffering from incipient insanity, or the early onset of insanity which may develop in a more definite form. In this way the problem is clarified, but not simplified. The Report creates a clear distinction between the definitely certifiable insane and those early, doubtful, and perhaps recoverable cases which now arise as "short time lunatics," whom the Commissioners wish to bring under treatment before they become even short-time lunatics, and hope by that and other means to prevent "full" certification.

In order to give effect to these views the Commissioners propose the arrangement of patients into two groups, Voluntary and In-voluntary.

They then proceed to out-line their recommendations in detail, the chief of which are mentioned above. These may now be examined in detail:—

1. Voluntary treatment without certificate or under Provisional Order.

From the earliest times the treatment of the insane has always been coupled with the idea of detention. Prior to 1845 whoever detained a lunatic must, if required, justify his act at common law, which he could do on a plea of necessity, supported by medical evidence. By the Act of 1845, this need was removed, the Statute making the Reception Order a justification at law. Section 100 of the same Act made it an offence to detain a lunatic in an unlicensed house or without a certificate.

Section 815 of the Lunacy Act, 1890, (the present law) repeats this provision, but the Act also provides that voluntary boarders may be received into Licensed Houses only. Since these houses provide

mainly, or almost exclusively, for patients in the private class (a small proportion of all insane), it follows that to patients in the pauper class the provision of accommodation as voluntary boarders is denied.

The Commission now recommend not only that this provision should extend to all classes of patients and all Institutions for lunatics, but that voluntary treatment should be provided in general hospitals, nursing homes, and "the kind of provision which has frequently been discussed in evidence under the general designation of 'Clinic,'" the accommodation having first the approval of the Board of Control.

If, either initially or subsequently, the patient will not be treated as a volunteer and it becomes necessary to detain him, he may be detained in any of these institutions. For this purpose it will be necessary to obtain a "Provisional Order." Apparently the requirements of this proceeding, and of the Order, will not differ substantially from a formal Reception Order, but it will authorise detention for, in the first instance, one month only, and, if renewed, up to a maximum of six months. If further detention is necessary a full Reception Order must be made.

The recommendation of the Commissioners as to the methods to be adopted to obtain this "Provisional Order" must be the subject of some criticism. At present preliminary detention up to a period varying from 2 to 17 days, is secured by the most simple method. The Medical Officer in charge of the Institution gives a certificate upon which detention follows. It might be argued that this is much too simple and is likely to be abused. In practice, however, the system works remarkably well. The Commissioners have expressed that view and, in the quotation at the head of this paper, expressed the opinion that by this method many cases have avoided final certification. They also say at page 21 that the intervention of the law should be as unobtrusive as possible. There is a closely reasoned argument in the Report (paragraph 47) in favour of trusting the medical man in mental illness as in other illness, and in support of the view that the less formality to which a mental patient is subject the better is his chance of recovery. The argument is unanswerable. But for the present simple method of preliminary detention, the Commissioners recommend the substitution of process on Petition and what must in practice become a very formal proceeding for the purpose of obtaining this Order. Nor is that all, the process must be repeated at the end of a month and again within five months, or less if necessary. All acquainted with the practical working of the Lunacy Law in its early stages will doubt the value of this elaborate machinery as an instrument for the avoidance of certification.

In this connection it should be mentioned that the present law provides two methods of certification, one, a simple process applicable to all not in the private class, and another, more complicated and formal altogether, for the private case. The Commissioners recommend the adoption of the latter method in all cases and the abandonment of the simple method. Since the Commissioners are agreed that the intervention of the law should be as unobtrusive as possible and that formality may be prejudicial to the patient in the early stages, it is to be regretted that some more simple process is not recommended for both

the preliminary uncertified detention, and for the obtaining of the "Provisional Order."

Throughout the Report the idea is expressed that the "Provisional Order" is to avoid certification. But the procedure proposed for obtaining the "Provisional Order" differs from the procedure now followed for certification in the great majority of cases in that it is more formal and elaborate. Certification will not be avoided because apparently the same medical certificate as is now used will be required, preceded and followed by greater formality than is now the case, but perhaps with a form of Order in different language. In the minds of the public this new procedure will not differ greatly from the existing procedure and whatever of stigma attaches to the certificate at present must attach also to the new certificate.

2. The use of general hospitals, nursing homes, etc.

The policy of the Lunacy Act, 1890, as expressed in Section 207, is gradually to reduce and finally extinguish the Licensed House. This was no doubt based upon the view that private profit should not be made out of the care of the insane. If the policy of the Act is here properly stated it should be noted that, in practice, it has probably reached the limit of its effect. There were 87 such houses when the Act of 1890 was passed and to-day there are only 68, with accommodation for 3,577 patients. As the number of private beds has been reduced there has been a corresponding rise in the charges for those remaining. Thus we have probably reached the limit of reduction.

The Commissioners now recommend that powers should be given to the Board of Control to grant new licenses so as to make possible the reception of voluntary and short time patients in various general hospitals, nursing homes, etc., as well as for the accommodation of the certified insane. They point out that the present position is anomalous in that the Licensed House has become a monopoly, and declare that this position should be removed either by the suppression of the Licensed House or the grant of new licenses. They recommend the latter course, but with most important powers of supervision conferred upon the Board of Control. Many reasons are given for this important change, among which should be mentioned the abolition of the monopoly interest and the need for an element of competition in place thereof.

3. The "extrication" of lunacy administration from the Poor Law.

On this part of the subject the Commissioners report(49).:—
 "Another aspect of the present day treatment of insanity which 'has been brought home to us is the extent to which it is associated 'with the Poor Law. For this there are no doubt historical reasons 'and reasons of convenience. . . . We cannot but feel that this 'association is unfortunate. It is another of the causes which have 'tended to accentuate the differentiation of the mentally afflicted 'from other sufferers. Many households make their first acquaintance 'with the Relieving Officer in connection with the occurrence in the 'family of a mental case. It is not a concomitant of other illnesses 'that the patient, in order to obtain treatment must necessarily 'become in law a pauper The present legal state of the great bulk of

“the insane persons in this country is that of paupers. . . . They have become in law paupers because they have been overtaken by this particular form of illness, although they may never before have been in contact with the Poor Law. Indeed, patients of means may, in certain circumstances, have to pass through a stage which renders them in law paupers before they regain the status of private patients. There runs, moreover, through the whole existing lunacy code a distinction in procedure between the pauper case and the private case, the justification for which has largely disappeared under modern social conditions. . . .”

In recognising the “historic reasons and reasons of convenience” for this connection, the Commissioners do less than justice to the subject. They fail to recognise the necessary and physical connection between these services. In the whole history of this country it does not appear to have ever been decided by any competent authority that the lunacy administration should be in the hands of the Poor Law authority—that problem solved itself through the association of mental disability with destitution, both before and after the manifestation of insanity.

The Statute of Elizabeth, 1601, directed the relief of “every poor, old, blind, lame and *impotent* person,” and the relief of mental disability, in all its forms and at all stages, grew naturally and necessarily out of that. The Statute of 1743—the earliest Statute relating to pauper lunatics—provided for the issue of a warrant by the Justices, directed to the constable, church wardens or overseers of the poor, to apprehend a dangerous lunatic “to be kept safely locked up in some secure place.” Thus of necessity the lunacy administration passed into the hands of the Poor Law authority and has so remained. Numerous Statutes passed from time to time since that date have contained similar provisions, confirming the connection, without the general principle having ever been considered.

It is no doubt true that there are many lunatics classified as paupers of whom it can be said that, except as lunatics, they have never been in receipt of relief. But an investigation into family history, where possible, would reveal, in many cases a close connection with the receipt of relief in its various forms, in ancestry, collaterally, and in the descendants. Such an investigation would no doubt reveal the fact that the majority of the insane arise in families which have a closer relation to the relief system than any similar number of families selected by any other means of selection, and that the mentality and destitution stand in relation to each other as cause and effect. Nowhere in the whole range of social inadequacy is defectiveness and the receipt of relief so closely associated as among the classes from which the bulk of the insane are drawn.

It is in point to observe that in the County of London alone there are about 6,000 lunatics classified as “detained in workhouses.” These include imbeciles and mentally deficient children maintained under the Poor Law (not the Mental Deficiency Acts) and adults, mainly congenital or senile cases, classified as lunatics because they cannot be lawfully detained by any other means. Of the great majority, probably of all, it may be said that they are necessarily paupers who are

insane: they are not paupers because they are insane. These are all detained under Sections 24 or 25 of the Lunacy Act, 1890, on permanent detention orders—permanent in the sense that the Orders are not subject to periodical revision as are Orders under other sections. The Royal Commission is significantly silent about these cases, who are provided for under the Poor Laws and once certified, remain in detention continuously.

But the Commission is not itself happy about the “extrication of lunacy administration from the Poor Law” as is shewn by several passages in the Report. For example,

“If the transfer of these responsibilities is affected. . . .
“there will be a class of case which will present difficulty. We refer
“to a person already in receipt of poor relief who subsequently
“becomes insane. We question whether that case should thereafter
“become chargeable to the lunacy authority.”

• They say nothing about the person who is intermittently in receipt of relief, but at the moment of certification happens not to be chargeable, or of the very large number of cases in which one member of the family is a lunatic—sometimes the head of the family—and the rest in receipt of relief. The complications arising from the principle propounded by the Commissioners are unlimited and do much to vitiate that principle.

If the views of the Commissioners on this point found expression in an enactment similar to that in Section 30 (2) of the Mental Deficiency Act, 1913, the position would become chaotic. It might result in severe competition between the Poor Law authorities and the Local Authorities as to which is to be responsible for the maintenance of patients, as well as in other difficulties.

Still more important is the recommendation at page 160, that notwithstanding all the provisions for “extricating,” the Relieving Officer should still have charged upon him the responsible duties now imposed by section 20 of the Lunacy Act. The value of these complex proposals can be tested only by experience. But if in practice the officer specially appointed by the Local Authority does not reside in his district, or if his district is too wide, or if for any other reason he is not available, the extrication process may become merely farcical, the Relieving Officer being left to deal with the great majority of alleged lunatics as a matter of urgency. In this matter too little attention has been paid to the sudden and urgent character of the onset of insanity in many cases, and to the fact that in the families in which insanity occurs both tradition and experience have developed a habit of making the first appeal to the Relieving Officer. Unless arrangements and regulations are carefully made to cover this procedure, the Relieving Officer may still continue as the effective Lunacy Officer in his district.

The Commissioners point out that this part of their recommendation must be tentative in view of the contemplated reform of the Poor Law service. If the provisional proposals now before the country become the law, the effect would be that the Poor Law areas and lunacy areas would become co-terminous. In these circumstances it would

not be difficult so to re-organise the lunacy service, within the compass of the present law, as to give effect to the views expressed by the Commissioners, whilst retaining the unity of the destitution service.

It is relevant here to call attention to the question of the efficiency of the services. Can it be suggested by any acquainted with the general practice that the administration of the Mental Deficiency Act, or of the provision for the treatment of tuberculosis patients—neither under the Poor Law—is anything like as efficient as the service for the arrest and certification of the insane?

4. The establishment of a national system of research.

This is perhaps the most promising of all the recommendations made by the Commissioners. They recommend that:—

(a) Each large mental institution should have a laboratory adequately equipped for routine examinations. (b) Higher research work should be conducted in a central laboratory in each County or group of Counties, and (c) That the Board of Control as the central authority should have powers to focus the activities of the several County laboratories and prevent over-lapping, and to co-ordinate and exploit the results.

All connected with this branch of the public service will recognise the need for some such system as is here suggested. Much valuable work has already been done, but that work needs to be enlarged and extended, and above all co-ordinated and directed into a central channel. It also needs finance. One effect of control by locally elected persons is economy, in an effort to satisfy the rate-payer. This, no doubt, is as it should be. But it is false economy to withhold the funds so urgently necessary for research in these matters. The traditional practice of shutting the insane up and away from the rest of the community, and, no doubt, the apparently hopeless character of insanity in many of its forms, has caused research in this branch of human disability to lag behind all other ailments.

Particularly is this so in the preliminary stages, where the effect of the Statutes, and of the time limits imposed thereunder, compel those dealing with the case to regard their interest as a passing one, limited to the few days allowed by law and dominated by a keen sense of personal responsibility under the law. The proposals of the Commissioners appear to refer to the larger institutions for lunatics and therefore to the patients already certified, many of them prolonged and (in the present state of our knowledge) hopeless cases. Whilst no one will suggest that research will not be helpful in these cases, the important problem now is the temporary, doubtful and borderline case. The main part of the Commissioners' attention was given to these early cases. In this they will be confirmed by the experience of certifying officers.

When the Commissioners say that "it is being perceived that 'insanity is, after all, only a disease like other diseases, though with 'distinctive symptoms of its own, and that a mind diseased can be 'ministered to no less effectively than a body diseased,'" they probably have in mind these early and uncertain cases. About 50% of alleged lunatics are ultimately certified and sent to asylums. The views of the

Commissioners have no doubt been influenced by the number of persons who suffer preliminary detention as alleged lunatics and are not certified, and by the number of persons who, being certified, are discharged after only a few months of detention. Of the first class, it may be observed that many of them are certified and detained at a later period; and of the latter, that their certification is rendered necessary, in their peculiar condition, by the time limits imposed by Statute for their treatment in the early stages without certification. Of both classes it may be observed that their detention, both brief and prolonged, depends upon the personal element—upon the views, that is, of those responsible under the Statute. This is, no doubt, a strong argument in favour of the proposal of the Commissioners that a special Medical Officer shall be appointed in all districts to do this work. And as regards the early discharges, the views and practices of Medical Superintendents vary greatly from district to district. The variability of these personal elements reduces the value of the statistics presented, so that less reliance can be placed upon the inferences drawn.

But there are other considerations arising in these early cases. A great number of them represent cases of purely temporary break-down—the result of a drinking bout, the strain of domestic upheaval, family quarrels and the like disturbance acting upon a highly nervous condition. Through the maze of these considerations the certifying officials have to find their way, in most cases without reasonable time for observation, with little opportunity for recording their results and always without that accumulation of intelligible data that only co-ordinated research can provide. Where these cases are certified, that development is made necessary, as the Commissioners suggest, by the limits imposed by Statute for periods of treatment.

A small proportion of those not certified might escape attention under the Lunacy Acts altogether were it not for the responsibility imposed by law upon the Relieving Officer.

In short, it may prove that a great number of these cases do not, in fact, represent a true insanity at all. They are the result of overwrought and nervous instability restrained and treated under the Lunacy Acts because they cannot be legally restrained otherwise.

From all this it will be seen that research should not be purely of the laboratory kind nor limited to the Institutions for the reception of the certified insane. A much more important field lies among the preliminary cases and at the place of original detention. It is here that the work is more difficult, but it is here also that it is more promising and likely in the end to be more profitable.

It may be regretted that in this Report the Eugenic aspect of the subject is not dealt with by the Commissioners. It should, however, be borne in mind that the Commission was appointed to consider the suggestion that detention was too easily ordered and unduly prolonged. This arose out of an important case recently before the Courts, followed by some popular demand for enquiry. A Commission appointed in these circumstances was bound to adhere strictly to its terms of reference, and certainly could not be expected to suggest new grounds for detention. Throughout its proceedings the Commission—which was strong on the legal side—displayed a keen regard

for the legal grounds of detention (the immediate condition of the patient) both by Statute and tradition, and identified itself with the public anxiety on the subject. This is reflected in the terms of the Report, the whole argument being one for the avoidance of detention wherever possible. Nor could this be otherwise until those who desire segregation on eugenic grounds established a case for such a change.

If the system of research now recommended is extended to include investigations into family history and the inheritance of mental disorder, on the lines practised by the late Sir Frederick Mott, who can doubt that, in a few years time, the grounds for detention may extend to include detention or segregation on biological grounds. The public mind moves slowly in these matters, but if the case for eugenics is as strong as we think it is, a system of research on the lines suggested will compel public attention to this side of the case.